IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.9259 OF 2004

Shri Namdeo Bhau Mali
and ors. .. Petitioners

Vs

Shri Baban Tukaram Mayekar, .. Respondent.

Mr P.S.Dani, for the petitioners.
Ms Gauri Godse, for the respondent.

CORAM : D.B.BHOSALE,J.
DATE : 08.09.2006

PC:

1. Heard the learned counsel for the parties.

2. Rule. Returnable forthwith. Ms Godse, learned counsel, waives service for the respondent. By consent, rule is heard forthwith.

3. This petition is directed against the order dated 13.1.04, which reads thus;

> "Decree passed in R.C.S. No.144/2000 is stayed to the extent of delivery of possession.
>
> The appellant to deposit the cost of the suit within one month from today. The appellants are directed to deposit Rs.2000/- p.m. by way of damages on or before 10th day of each month. If the appellants fail to deposit the amount of damages on any two consecutive months, the stay would stand vacated.

Appeal be expedited. Paper book be expedited."

This Court, while issuing rule on 3.8.2005, passed the following order:

> "Rule. Rule on interim relief returnable after four weeks. Ad-interim order in terms of prayer clause (c) subject to the condition that within a period of three weeks from today the petitioner deposits an amount of Rs.500/- per month from the month of August, 2003 till the end of August, 2005 and until further orders goes on depositing, on or before 10th of each calender month, Rs.500/- per month in the Appeal court.
>
> 2. Failure of the petitioner in depositing the amount as directed above, will result in rejection of this petition without any reference to the court."

Mr Dani, learned counsel for the petitioners, without prejudice to the petitioners' contentions in the appeal that is pending before the District Court, Alibag, submits that the petitioners are prepared to deposit Rs.1000/- per month till disposal of the appeal with effect from August, 2005. The deposit would be subject to outcome of the appeal. Mr Dani, further submits that the petitioners have already filed the application for refund of the deposit. That application will be decided with the appeal if the appeal filed by the petitioners is allowed, or in the enquiry under Order 20 rule 12

(1)(c) of Code of Civil Procedure. Ms.Godse, learned counsel for the respondent, does not oppose the prayer made by Mr Dani. In the circumstances, I pass the following order.

(i) The petitioners to deposit Rs.1000/- per month from August, 2005 till the disposal of the appeal. The Appeal court to decide the appeal as expeditiously as possible and preferably within a period of three months from the date of receipt of this order. The application of the petitioners for refund of the amount deposited by them be decided with the appeal if the District Court intends to allow the appeal.

(ii) If the appeal is dismissed, it would be open for the petitioners to make similar application during enquiry of mesne profits under Order 20 rule 1 of the Code of Civil procedure. The impugned order dated 13.1.2004 stands modified in the aforesaid terms. The writ petition is disposed of. Rule discharged.

(D.B.BHOSALE,J.)